IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10534 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABDUL MAJID @ ALI ABDULSATTAR SHAIKH

Versus

COMMISSIONER OF POLICE AHMEDABAD

Appearance:

1. Special Civil Application No. 10534 of 2004

MR JK PARMAR for Petitioner No. 1

MS HB PUNANI AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 14/12/2004

ORAL JUDGEMENT

#. Heard Mr.J.K.Parmar, learned counsel appearing for the petitioner and Ms.H.B.Punani, learned AGP for the

other side.

#. The present petition is filed under Article 226 read with Articles 21 and 22(5) of the Constitution of India challenging the legality and validity of the order of detention dated 9.6.2004 passed by the Commissioner of Police, Ahmedabad City under purported exercise of powers vested with the detaining authority under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short "the Act").

#. The petitioner is branded as "a bootlegger" within the meaning of Section 2(b) of the Act, as he was found involved in offence registered under the Bombay Prohibition Act. While recording subjective satisfaction to the effect that the activity of the present petitioner is detrimental and a threat to maintenance of public order and public health, the detaining authority has considered the fact of registration of one criminal offence registered by Prohibition Police Station (East) of City of Ahmedabad. The petitioner was found involved with other accused person in reference to 300 liters country liquor and loading rickshaw worth Rs.60,000/-. The petitioner was arrested on the very day of the offence i.e. 7th June, 2004 and Mr.Parmar has informed that since the offences against the accused have been registered, then, there was no need for preventive detention. As such, no formal statements have been recorded by the sponsoring authority and on 9th June, 2004 the order under challenge is passed. That on the date of order of detention, the petitioner was under judicial custody, so, it was no necessary to pass any order of preventive detention, is one of the arguments advanced before the Court.

#. Undisputedly, this is case of registration of one solitary incident, considered by the authority. So ratio of the decision in case of BIR SOHANLAL BISNOY , 2004(2) GLR 1051, where this Court has observed in para-4 & 5 as under :

"4. Article 22(3) of the Constitution of India expressly provides that the safeguards contained in Art.22(1) and 22(2) of the Constitution of are not to apply to preventive detention. Article 22(4) of the Constitution provides and opens with double negative, put in positive form, and in its real substance, means that a law which provides for preventive detention for a period longer than three months, shall contain all the provisions prescribed in

clauses (4) and (5) of Article-22 of the Constitution. Article 22(5) of the Constitution prescribes that when any person under a preventive detention law is detained, the authority making the order, shall as soon as may be, communicate to such person, the grounds on which the order has been made, and shall afford him with the earliest opportunity of making a representation against the order. Article 22(5) of the Constitution is of general importance and operation in respect of every detention order made under any preventive detention law.

5. In this group of petitions, all the detenus, except one in Special Civil Application No.825 of 2003, are treated and described as "bootleggers" as defined under Sec.2(b) of the P.A.S.A.Act and only on offence is registered against each detenu under the provisions of the Bombay Prohibition Act, 1949, whereas in Special Civil Application No.825 of 2003, the detenu is treated as "dangerous person" as defined in Sec.2(c) of the P.A.S.A. Act, and in this case also, a solitary incident is made basis for passing the detention order against him."

#. As the petitioner on the date of execution of the order of detention was in judicial custody, the ratio of the decision of the Apex Court in case of AMRITLAL AND OTHERS V. UNION GOVERNMENT, AIR 2000 SC 3675 would squarely help the present petitioner. So without entering into merits of the other grounds raised in the petition, it is possible to hold that the order under challenge is not sustainable in eye of law and it is violative of Articles 21 read with 22(5) of the Constitution of India. The petition, therefore, shall have to be allowed.

#. The present petitioner is also entitled to one more ground that he should be set at liberty forthwith because co-detenu has been set at liberty by this Court while allowing Special Civil Application No.8681 of 2004. This argument is also accepted as valid argument.

#. The petition succeeds and the same is allowed. The order of detention dated 9.6.2004 is vitiated and the same is hereby quashed and set aside. The detenu - ABDUL MAJID @ ALI ABDULSATTAR SHAIKH who has been detained at Bhavnagar Jail be set at liberty forthwith if not

required in any other case. Rule is made absolute accordingly. No order as to costs. Direct Service is permitted.

Date :14/12/2004 [C.K.Buch, J.]

#kailash#